

### REMARKS

Applicant has reviewed the Office Action dated July 17, 2003. Claims 13, 17-18, 23, 27-28, 31-38 and 40 are amended, and claims 41-44 are added; as a result, claims 1-44 are now pending in this application.

#### Objection to the Claims

In the Office Action, claims 17, 18 and 40 were objected to due to various informalities. Claims 17, 18 and 40 have been amended. Applicant respectfully requests withdrawal of the objection, and reconsideration and allowance of the claims.

#### §101 Rejection of the Claims

In the Office Action, claims 31 – 38 were rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. Claims 31-38 have been amended to recite a computer-readable medium encoded with computer-readable instructions, when executed the instructions create a histogram for displaying data regarding cardiac events as two or more statistical distributions.

Applicant respectfully requests withdrawal of the §101 Rejection, and reconsideration and allowance of the claims.

#### §112 Rejection of the Claims

In the Office Action, claims 13, 23, 27, 28, 38 and 40 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant respectfully asserts that the terms "RVS", "RVP", and "LVP" are definite to those of ordinary skilled in the art who have read and comprehended the application. However, claims 13, 23, 28, 38 and 40 have been amended to further clarify the abbreviated terms "RVS", "RVP", and "LVP". No new matter has been added.

Claim 27 has been amended to replace "providing" in line 1 with --displaying--.

Applicant respectfully requests withdrawal of the §112 Rejection, and reconsideration and allowance of the claims.

§102 Rejection of the Claims

In the Office Action, claims 1 – 25 were rejected under 35 USC § 102(b) as being anticipated by Valikai et al. (U.S. Patent No. 5,948,005). Claims 1 – 25 also were rejected under 35 USC § 102(e) as being anticipated by Conley et al. (U.S. Patent No. 6,415,175). Applicant respectfully traverses these §102 Rejections for at least the following reasons.

With respect to independent claim 1, Applicant is unable to find, among other things, in the cited portions of either the Valikai et al. reference (Valikai) or the Conley et al. reference (Conley), a display for providing a histogram of the data as two or more statistical distributions for the two or more sites, where the histogram includes both a right ventricular cardiac event distribution and a left ventricular cardiac event distribution, as recited in the claim. The rejection stated: *the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device.*

Applicant respectfully traverses this position, and respectfully asserts that the recited claim language concerns more than just the type of data and the locations of the measurements. Applicant is unable to find a showing or suggestion in Valikai or Conley that the Valikai device or the Conley device are capable of providing a histogram that presents two or more statistical distributions for two or more sites in the histogram.

Additionally, with respect to dependent claim 6, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a histogram that comprises a plurality of histogram bins for the two or more statistical distributions, where each of the histogram bins includes a portion of the right ventricular cardiac event distribution and a portion of the left ventricular cardiac event distribution, as recited in the claim. With respect to dependent claim 7, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a histogram where the portion of the right ventricular cardiac event distribution is adjacent to the portion of the left ventricular cardiac event distribution in each of the histogram bins, as recited in the claim. With respect to dependent claim 8, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a histogram that includes a histogram axis extending through each of the histogram bins, where the portion of the right ventricular cardiac event distribution and the portion of the left ventricular cardiac event distribution are on opposing sides of the histogram axis in each of the histogram bins, as recited in the claim.

Dependent claims 2-5 and 9-18 depend either directly or indirectly on independent claim 1, and are believed to be patentable at least for the reasons provided with respect to claim 1.

With respect to independent claim 19, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a device comprising a display for providing a histogram of the data as statistical distributions for the two or more sites, where the histogram includes both a right ventricular cardiac event distribution and a left ventricular cardiac event distribution, and where the right ventricular cardiac event distribution is adjacent to the left ventricular cardiac event distribution, as recited in the claim. Dependent claim 20 depends on independent claim 19, and is believed to be patentable at least for the reasons provided with respect to claim 19.

With respect to independent claim 21, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a programmer device comprising a display for providing a histogram of the data as two or more statistical distributions for the two or more sites, where the two or more statistical distributions are selected from the recited set of distributions, as recited in the claim. Dependent claims 22-24 depend either directly or indirectly on independent claim 21, and are believed to be patentable at least for the reasons provided with respect to claim 21.

With respect to independent claim 25, Applicant is unable to find, among other things, in the cited portions of either Valikai or Conley, a programmer device comprising a display for providing a histogram of the data as two or more statistical distributions for the two or more sites, where the statistical distributions are selected from the set consisting of at least two statistical distributions in a first ventricle and at least one statistical distribution in a second ventricle, and at least two statistical distributions in a first atrium and at least one statistical distribution in a second atrium, as recited in the claim.

Thus, Applicant believes that claims 1-25 are patentable at least for these reasons. Applicant respectfully requests withdrawal of the §102 Rejections, and reconsideration and allowance of the claims.

Allowable Subject Matter

Applicant acknowledges the allowance of claims 26, 29, 30 and 39.

In the Office Action, claims 27 and 28 were indicated to be allowable if rewritten to overcome the rejection(s) under 35 USC § 112, second paragraph, set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

In the Office Action, claim 40 was indicated to be allowable if rewritten to overcome the rejection(s) under 35 USC § 112, second paragraph, and the minor informality objection set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Applicant believes that amended claims 27, 28 and 40 are in condition for allowance with claims 26, 29, 30 and 39.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested.

The Commissioner is hereby authorized to charge the additional claims fee of \$158.00, and any additional fees deemed necessary, to Deposit Account 19-0743.

The Examiner is invited to telephone Applicant's attorney ((612) 373-6960) to facilitate prosecution of this application.

Respectfully submitted,

JEFFREY E. STAHMANN ET AL.

By their Representatives,

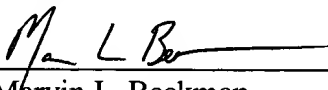
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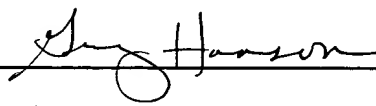
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Date 10-15-03

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15 day of October, 2003.

GREG HANSON  
Name

  
Signature